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IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-114

A. T. TSOUMAS, Director, Illinois Department of Financial Institutions, *Petitioner.*

vs.

GLEN ELLYN SAVINGS AND LOAN ASSOCIATION, THE MILLIKEN NATIONAL BANK OF DECATUR and THE FIRST FEDERAL SAVINGS AND LOAN ASSOCIATION OF WAUKEGAN, *Respondents.*

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

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PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

The petitioner, Director of the Illinois Department of Financial Institutions, respectfully prays that a Writ of Certiorari issue to review the judgment and opinion of the Supreme Court of Illinois entered on May 26, 1978.

OPINION BELOW

The opinion of the Supreme Court of Illinois is not yet reported and is included herein as Appendix A.

JURISDICTION

The judgment of the Supreme Court of Illinois was entered on May 26, 1978. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1257 (3).

QUESTION PRESENTED

Whether, under the supremacy clause of the United States Constitution, the Federal Home Mortgage Disclosure Act preempts the application of the Illinois Financial Institutions Disclosure Act to certain federally chartered financial institutions operating in Illinois?

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

U.S. Const., art VI;

12 U.S.C. §§ 2801 *et seq.;*

Ill. Rev. Stat., 175, Ch. 95, pars. 201-208.

Each provision is set forth in Appendix B hereto (pp. A7-13).

STATEMENT OF THE CASE

The Illinois Financial Institutions Disclosure Act became effective on October 1, 1975. (Ill. Rev. Stat., 1975, Ch. 95, §§ 201 *et seq.*) The Act requires any bank, insurance company, mortgage banking company or savings and loan association which operates or has a place of business in the State of Illinois to file semi-annually with the Director of the Department of Financial Institutions and to make available to the public,

> . . . a statement showing for each neighborhood which lies wholly or partially within a county having a population of more than 100,000 persons, and a statement showing for each census tract which lies wholly or partially within a county having a population of more than 100,000 persons:
>
> The number and aggregate dollar amount of written applications for, and the number granted and aggregate dollar amount of:
>
> (1) Loans secured by residential real estate;
>
> (2) mortgage loans insured under the federal National Housing Act . . .
>
> (3) mortgage loans guaranteed under the provisions of the federal Veterans' Benefits Act . . .
>
> (4) construction loans; and
>
> (5) home improvements loans and loans made in accordance with Subchapter I, "Housing Renovation and Modernization," of the National Housing Act . . .
>
> (Ill. Rev. Stat., 175, Ch. 95, § § 202-203)

The Federal Home Mortgage Disclosure Act was enacted on December 31, 1975. (12 U.S.C. §§ 2801 *et seq.*) The Act requires any commercial bank, savings bank, savings and loan association, building and loan association, or homestead association (including cooperative banks) or

credit union which makes federally related mortgage loans, as determined by the Board of Governors of the Federal Reserve System, to compile and make available to the public,

> [T]he number and total dollar amount of mortgage loans which were (A) originated, or (B) purchased by that institution during each fiscal year . . . itemized by census tracts . . . otherwise by zip code, for borrowers, under mortgage loans secured by property located within that standard metropolitan statistical area . . . [and] for all such mortgage loans which are secured by property located outside that standard metropolitan statistical area. (12 U.S.C. § 2803).

On March 4, 1976, plaintiffs filed their complaint for declaratory and injunctive relief, seeking a declaration that the Illinois Financial Institutions Disclosure Act, as well as the regulations and reporting forms issued by the Illinois Department of Financial Institutions, are unconstitutional or void; also that the Act is inapplicable to and unenforceable against financial institutions organized under the laws of the United States and operating in the State of Illinois.

The trial court granted plaintiffs' motion for a preliminary injunction, which was subsequently reversed by the Illinois Appellate Court on interlocutory appeal. On remand, the Director of the Department filed an answer to the complaint. Plaintiffs filed a second amended complaint which omitted the allegation that the Illinois statute was unconstitutional.

The trial court granted plaintiffs' motion for summary judgment and declared, *inter alia,* that the Illinois statute is inapplicable and unenforceable against financial institutions operating in the State of Illinois but organized under the laws of the United States.

On direct appeal, the Illinois Supreme Court held that, under the supremacy clause of Article VI of the United States Constitution, the federal disclosure statute has preempted the application of the state disclosure statute to federally chartered institutions subject to the Federal Act. The Court further declared the Illinois Financial Institutions Disclosure Act invalid *in toto* because of the nonseverability clause of the Illinois Act. (Ill. Rev. Stat., 1975, Ch. 95, § 208).

REASONS FOR GRANTING THE WRIT

UNDER THE SUPREMACY CLAUSE OF THE UNITED STATES CONSTITUTION, THE FEDERAL HOME MORTGAGE DISCLOSURE ACT DOES NOT PREEMPT THE APPLICATION OF THE ILLINOIS FINANCIAL INSTITUTIONS DISCLOSURE ACT TO CERTAIN FEDERALLY CHARTERED FINANCIAL INSTITUTIONS OPERATING IN ILLINOIS.

Both the Federal Home Mortgage Disclosure Act and the Illinois Financial Institutions Disclosure Act are concerned with the problem of "redlining," which consists of the refusal of certain financial institutions to make mortgage and rehabilitation loans for older, urban homes. As a major contributor to the widespread decline and deterioration of neighborhoods, "redlining" has been recognized as a uniquely local problem requiring essentially local solutions. (H.R. Rep. No. 94-561, 94th Cong. 1st Sess. (1975), U.S. Cong. & Adm. News V 2 at 2321-22).

In an attempt to eliminate the practice of "redlining," the Illinois mortgage disclosure statute requires both state and federally chartered financial institutions to disclose certain information regarding home mortgage loans This Court will never lightly infer that the state police power to deal with such problems as "redlining" has been impaired merely by the fact that Congress has chosen to pass legislation in the same area covered by state law. *Railway Mail Ass'n* v. *Corsi*, 326 U.S. 88, 97, 89 L. Ed. 2072 (1945). Rather, this Court has repeatedly stated that when a state's exercise of its police power is challenged under the supremacy clause, an assumption initially exists that "the historic police powers of the State were not to be superceded by the Federal Act unless that was the clear and manifest pur-

pose of Congress." *Ray* v. *Atlantic Richfield Co.*, __ U.S. __, 55 L. Ed. 2d 179, 188 (1978). In fact, where state legislation pertains, as here, to "a matter of peculiarly local concern," federal law will not be held to preempt state law absent "an unambiguous congressional mandate to that effect." *Florida Avocado Growers* v. *Paul*, 373 U.S. 132, 10 L. Ed. 2d 248, 258-59 (1963).

The federal mortgage disclosure statute does not reflect an unambiguous congressional mandate that federal law exclusively applies to federal financial institutions, as found by the Illinois Supreme Court. Notably, the federal disclosure statute was passed with full knowledge by Congress that some states, including Illinois, already required in clear and unequivocal language that the state mortgage disclosure laws apply equally to state and federal financial institutions. (H.R. Rep. No. 94-561, 94th Cong. 1st Sess. (1975), U.S. Cong. & Adm. News V. 2 at 2320). Yet, there is no provision of exclusivity in the federal statute, nor any expression which excuses compliance with state law by federal institutions.

To the contrary, the language of the Federal Act reveals that Congress specifically preserved the power of the states to act in this area, and actually anticipated a system of dual reporting. Section 2805(a) of the federal statute expressly provides that state chartered institutions which make federally related mortgage loans are subject to both the Federal Act and state reporting requirements unless the State Act is inconsistent with the provisions of the Federal Act. Where an inconsistency exists, all institutions must comply only with federal law. 12 U.S.C. § 2805(a). The result, then, for some state chartered institutions is dual reporting, a result unmistakably forseen and intended by Congress. Where Congress has used "such care to preserve

specific state authority, even when it duplicated federal regulation, it is a fair inference . . . that non-conflicting state authority was left undisturbed." *Rice* v. *Board of Trade,* 331 U.S. 247, 91 L. Ed. 1468, 1474 (1947).

Alternatively, nowhere in the Federal Act did Congress exempt federally chartered financial institutions from complying with state disclosure requirements. Congress did provide in § 2805(b) that any *state* chartered institution may be exempt from the federal requirements where "that institution is subject to [state] requirements substantially similar to those imposed under this chapter, and that such law contains adequate provisions for enforcement." 12 U.S.C. § 2805(b). Such exemption unquestionably resulted from the stated recognition by Congress that solutions to the problem of neighborhood decline should, and must, be found at the local level. Clearly, if Congress had intended to exempt federally chartered financial institutions from complying with state mortgage disclosure laws, it would have stated that intention in express language, as it did when it intended to exempt state institutions from complying with the federal requirements.

It decidedly cannot be said that an actual conflict exists between state and federal law in the field of mortgage disclosure, so as to necessitate a finding that federal law preempts state law regarding federal financial institutions on that basis. See *Huron Portland Cement Co.* v. *Detroit,* 362 U.S. 440, 4 L. Ed.2d 852, 856 (1960). Rather, the Illinois Supreme Court specifically noted the compatibility in purpose between the two acts. (Opinion, A5). Although the Illinois Act does require greater disclosure than is required under the Federal Act, this Court has held that individual states can demand adherence to higher standards by its own residents than is required by federal regulations, "at least in the absence of an express contrary command of Congress," *Florida Avocado Growers* v. *Paul,* 10 L. Ed. 2d at 258. Likewise, § 2805 of the Federal Act expressly permits states to require greater disclosure by providing that state laws cannot be determined to be inconsistent with federal law for the reason that state law requires maintaining records with greater disclosure. 28 U.S.C. § 2805.

To reach the conclusion that federal law preempts state regulatory action in the situation involved here, the Illinois Supreme Court had to find "either that the nature of the regulated subject permits no other conclusion, or that the Congress has unmistakably so ordained." *De Canas* v. *Bica,* 424 U.S. 351, 47 L. Ed. 2d 43, 49 (1976). The Court, however, neither applied these criteria, nor made any such findings. Instead, the Court invalidated the Illinois statute on the basis that the language of § 2805(a) of the Federal Act demonstrates a congressional "understanding that the Federal Act normally would be construed to preempt the Illinois Act. . . ." (Opinion, A. 4-5) The Court thus wholly avoided confronting the initial contrary presumption that preemption does not exist. Particularly in view of the specific state exemption provision of the federal statute, as well as congressional awareness of existing state law, it is incomprehensible that Congress would not have more unmistakably expressed its intent to preempt state action in the Federal Act itself, if indeed that were its intention.

Mortgage disclosure is certainly not "a subject by its very nature admitting only of national supervision," nor "a subject demanding exclusive federal regulation in order to achieve uniformity vital to national interests." *Florida Avocado Growers* v. *Paul,* 10 L. Ed. 2d at 257. Rather, it is again emphasized that Congress itself regarded the disclosure of lending patterns regarding the practice of "redlining" as a subject matter properly, and primarily, within the scope of state superintendence.

As stated, the Illinois Supreme Court itself noted the similarity in purpose between the federal and state statutes; also that "subjecting federally chartered institutions to the additional requirements of the Illinois Act could only further the above-quoted purpose of the Federal Act." (Opinion, A. 5) In order to reconcile the obvious conflict between this statement and its holding, the Court found it necessary to conclude that, based on the legislative history of the federal statute, "Congress retreated somewhat from its stated purpose in order to protect the interests of certain Federal agencies." (Opinion, A. 5) As can readily be seen, however, the legislative history of the federal statute in this regard is at best inconclusive, and consequently cannot support a finding of preemption.

House Report No. 94-561 manifests a clear initial intent by Congress that federal institutions comply with state laws and, in some instances, *only* with State laws:

> To insure compliance by Federal institutions with stricter state disclosure statutes, H.R. 10024 makes it clear that Federal institutions must comply with state law and regulations, even if it should be inconsistent with Federal law by requiring maintenance of records with greater geographic or other detail, or provide for greater disclosure than is required by Federal law. H.R. 10024 would apply to all financial institutions, with the proviso that state law would take precedence in states with "substantially similar" requirements, because your committee recognizes, in the final analysis, solutions to the problems of urban disinvestment are going to come at the local and state level. (H.R. Rep. No. 94-561, 94th Cong., 1st Sess. (1975) U.S. Cong. & Adm. News V. 2 at 2320-21)

The proposed legislation as described above presented a critical problem regarding "whether State regulation will be adhered to or whether Federal regulation will be adhered to in a [federal] savings and loan company if there is a difference between the State regulation and the Federal regulation." (121 Cong. Rec. H. 10517 (October 31, 1975)). This problem emerged from the fact that,

> The Senate's intent was to subject all depository institutions in a jurisdiction to the same mortgage disclosure law, whether State or Federal, depending on which offered a greater degree of disclosure of mortgage information. (H.R. Conf. Rep. No. 94-726 at 2336.)

The Senate's concept of state disclosure alone, in some instances, was not adopted. Instead, the Senate acceded to the House plan so that, in situations of conflict, all institutions must now follow federal law; thus,

> . . . in no case could a Federally chartered institution be granted an exemption from this Act. (H.R. Conf. Rep. No. 94-726 at 2336)

In reading House Report 94-561 and House Conference Report 94-726 together, one conclusion emerges: The clear and manifest intention of Congress is that all federally chartered institutions which are subject to state disclosure laws must comply with both state and federal law. This is the same reporting system to which state chartered institutions which make federally related mortgages are subject. The only difference is that the state chartered institutions may receive an exemption from the Federal Act upon a determination of the Board that the state disclosure law is substantially similar to the Federal Act. Federally chartered institutions, contrary to the desires of the Senate, will be subject to compliance with both the federal Act and the Act of the state in which they are operating, except that when State law is found to be inconsistent with the federal regulation, only federal law applies.

The above interpretation preserves the power of the State of Illinois to deal most effectively with the acute problem of deteriorating neighborhoods, without in any way impairing federal law in the area of mortgage disclosure. "[T]he proper approach is to reconcile 'the operation of both statutory schemes with one another rather than holding [the state scheme] completely ousted.' " *De Canas* v. *Bica,* 424 U.S. 351, 47 L. Ed. 2d 43, 50, fn 7b (1976). The Illinois Supreme Court made no attempt to reconcile the federal and state mortgage disclosure laws, but instead arbitrarily attributed to Congress an intent to depart from the clearly stated purpose of the Federal Act. As a result, the Court erroneously invalidated the entire state legislative scheme in the area of mortgage disclosure.

CONCLUSION

For these reasons, this Petition for a Writ of Certiorari to review the judgment and opinion of the Supreme Court of Illinois should be granted.

Respectfully submitted,

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APPENDIX A

Docket No. 49339—Agenda 16—March 1978.

GLEN ELLYN SAVINGS AND LOAN ASSOCIATION *et al.,* Appellees, v. A. T. TSOUMAS, Director, Illinois Department of Financial Institutions, Appellant.

MR. JUSTICE CLARK delivered the opinion of the court:

The primary question in this case is whether, under the supremacy clause of the United States Constitution (U.S. Const., art. VI), the Home Mortgage Disclosure Act of 1975 (12 U.S.C. secs. 2801 *et seq.* (1976)) ("Federal Act") has preempted the application of the Financial Institutions Disclosure Act (Ill. Rev. Stat. 1975, ch. 95, par. 201 *et seq.*) ("Illinois Act") to certain federally chartered banks and savings and loan associations operating in Illinois. The circuit court concluded that the Federal Act does preempt the application of the Illinois Act to certain federally chartered banks and savings and loan associations. Because we agree with that conclusion, we need reach no other issues, for the Illinois Act contains the following self-destruct clause:

> "If any provision of this Act *or the application thereof to any person or circumstance* is held invalid, such determination of invalidity shall apply to all provisions of this Act. No provision is severable." (Emphasis added.) Ill. Rev. Stat. 1975, ch. 95, par. 208.

It is undisputed that both acts are directed toward the same general object: disclosure of the geographical distribution of the real estate securing the extension of credit by various financial institutions, with a view toward elucidating whether such institutions have arbitrarily refused

to extend credit secured by real estate located in certain urban areas ("redlining"). Toward that end, the Illinois Act requires every bank, insurance company, mortgage banking company, and savings and loan association which operates or has a place of business in Illinois to file with the Director of the Illinois Department of Financial Institutions and to make publicly available the following information about its lending activity:

> "* * * a statement showing for each neighborhood [zip code] which lies wholly or partially within a county having a population of more than 100,000 persons, and a statement showing for each census tract which lies wholly or partially within a county having a population of more than 100,000 persons:
>
> The number and aggregate dollar amount of written applications for, and the number granted and aggregate dollar amount of:
>
> (1) Loans secured by residential real estate;
>
> (2) mortgage loans insured under the federal National Housing Act, Title 12, United States Code, Chapter 13;
>
> (3) mortgage loans guaranteed under the provisions of the federal Veterans' Benefits Act, Title 38, United States Code, Chapter 37, Subchapter II;
>
> (4) construction loans; and
>
> (5) home improvement loans and loans made in accordance with Subchapter 1, 'Housing Renovation and Modernization', of the National Housing Act, Title 12, United States Code, Chapter 13." Ill. Rev. Stat. 1975, ch. 95, par. 203.

The Federal Act, passed only a few months after and with knowledge of the Illinois Act (see H.R. Rep. No. 94-561, 94th Cong., 1st Sess. 19, reprinted in [1975] U.S. Code Cong. & Ad. News 2303, 2320) requires all depository institutions (including, *inter alia,* banks, credit unions, and savings and loan associations) which had assets greater than $10 million as of their last full fiscal year, and which maintain a home or branch office within a standard metropolitan statistical area (SMSA) to file with the appropriate Federal official and make publicly available the following information:

> "[T]he number and total dollar amount of mortgage loans which were (A) originated, or (B) purchased by that institution during each fiscal year * * * itemized * * * by census tracts [where practicable] * * *, otherwise by zip code, for borrowers, under mortgage loans secured by property located within that standard metropolitan statistical area * * * [and] for all such mortgage loans which are secured by property located outside that standard metropolitan statistical area." (12 U.S.C. 2803 (1976).)

Even a quick comparison of the two statutes reveals substantial differences in the coverage and mechanics of the two disclosure schemes. Those differences, however, are immaterial in light of the more specific treatment given the question of preemption in section 306 of the Federal Act (12 U.S.C. sec. 2805 (1976)).

> "Sec. 2805. Relation to state laws
>
> (a) This chapter does not annul, alter, or affect, or exempt any State chartered depository institution subject to the provisions of this chapter from complying with the laws of any State or subdivision thereof with respect to public disclosure and recordkeeping by depositor institutions, except to the extent that those laws are inconsistent with any provision of this chapter, and then only to the extent of the inconsistency. The Board is authorized to determine whether such inconsistencies exist. The Board may not determine that any such law is inconsistent with any provision of this chapter if the Board determines that such law requires the maintenance of records with greater geographic or

other detail than is required under this chapter, or that such law otherwise provides greater disclosure than is required under this chapter.

(b) The Board may by regulation exempt from the requirements of this chapter any State chartered depository institution within any State or subdivision thereof if it determines that, under the law of such State or subdivision, that institution is subject to requirements substantially similar to those imposed under this chapter, and that such law contains adequate provisions for enforcement. Notwithstanding any other provision of this subsection, compliance with the requirements imposed under this subsection shall be enforced under—

(1) Section 1818 of this title in the case of national banks, by the Comptroller of the Currency; and

(2) Section 1464(d) of this title in the case of any institution subject to that provision, by the Federal Home Loan Bank Board."

The language of section 306 plainly states that the Federal Act is not intended to preempt the application of equally stringent, antiredlining disclosure acts to State chartered institutions. Under the doctrine of *expressio unius exclusio alterius est* (*People ex rel. Moss* v. *Pate* (1964), 30 Ill. 2d 271), this language cannot be presumed to be surplusage (*Hirschfield* v. *Barrett* (1968), 40 Ill. 2d 224), and it thus demonstrates Congress' understanding that in the absence of such language, the Federal Act would be preemptive of similar State legislation. "The purpose of Congress is the ultimate touchstone." (*Retail Clerks International Association* v. *Schermerhorn* (1963), 375 U.S. 96, 103, 11 L. Ed. 2d 179, 184, 84 S. Ct. 219, 223; accord, *Malone* v. *White Motor Co.* (1978), __ U.S. __, __, __ L. Ed. 2d __, __, 98 S. Ct. 1185, 1190). Here, the plain language demonstrates not only Congress' understanding that the Federal Act normally would be construed to preempt the

Illinois Act, but also its intention that only the regulation of State-chartered institutions be exempted from such preemption. Of course, if construction of the plain language of section 306 of the statute led to a result which was clearly repugnant to the purpose of the statute read as a whole and in light of its history, we would find that the above-quoted statutory language was, after all, mere surplusage. (*E. g., People* v. *Todd* (1975), 59 Ill. 2d 534). That is not the case here, however. Although the stated purpose of the Federal Act is "* * * to provide the citizens and public officials of the United States with sufficient information to enable them to determine whether depository institutions are filling their obligations to serve the housing needs of the communities and neighborhoods in which they are located and to assist public officials in the determination of the distribution of public sector investments in a manner designed to improve the private investment environment" (12 U.S.C. sec. 2801(b) (1976)); and although subjecting federally chartered institutions to the additional requirements of the Illinois Act could only further the above-quoted purpose of the Federal Act, it is plain from the legislative history of the statute that Congress retreated somewhat from its stated purpose in order to protect the interests of certain Federal agencies. The Senate version of the Federal Act would not have preempted the application of State laws to federally chartered institutions. The House, however, apparently responding to suggestions from the *amicus curiae* in this case, the Federal Home Loan Bank Board (FHLBB) (see 121 Cong. Rec. H10,517 (daily ed. Oct. 31, 1975) (remarks by Rep. Stevens)), insisted that federally chartered institutions not be subjected to State disclosure laws. The House apparently accepted the FHLBB's reasoning that "subjecting Federally chartered institutions to State disclosure laws would threaten the dual

banking system." See H. Conf. Rep. No. 726, 94th Cong., 1st Sess. 10, reprinted in [1975] U.S. Code Cong. & Ad. News 2333, 2336 ("Conference Report").

We need not agree with that reasoning to be bound by it, for the conferees on the part of the Senate reluctantly agreed to the House version, and it has become law. (See Conference Report, at 2336.) Accordingly, we hold that, under the supremacy clause of article VI, United States Constitution, the Federal Act has preempted the application of the State Act to federally chartered institutions subject to the Federal Act. Although the circuit court reached another issue, involving the validity of certain administrative actions taken by the Illinois Director of Financial Institutions allegedly pursuant to the State Act, we need not reach that issue, because of the aforementioned "self-destruct clause" of the State Act. Though neither party has specifically referred us to that clause (the State did however include it as part of the statutory appendix to its brief), the intent of that clause is both unmistakable and clearly applicable. Thus, we vacate as moot that portion of the circuit court's judgment which deals with the validity of the Director's actions, and instead, amend the judgment to declare the Illinois statute invalid *in toto*.

For the foregoing reasons, the judgment of the circuit court is affirmed in part as modified and vacated in part as moot.

Judgment affirmed in part as modified and vacated in part as moot.

MORAN and KLUCZYNSKI, JJ., took no part in the consideration or decision of this case.

APPENDIX B

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

United States Constitution, Article VI:

* * *

> This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

Federal Home Mortgage Disclosure Act

12 U.S.C. § 2801:

> **§ 2801. Congressional findings and declaration of purpose**
>
> (a) The Congress finds that some depository institutions have sometimes contributed to the decline of certain geographic areas by their failure pursuant to their chartering responsibilities to provide adequate home financing to qualified applicants on reasonable terms and conditions.
>
> (b) The purpose of this chapter is to provide the citizens and public officials of the United States with sufficient information to enable them to determine whether depository institutions are filling their obligations to serve the housing needs of the communities and neighborhoods in which they are located and to assist public officials in their determination of the distribution of public sector investments in a manner designed to improve the private investment environment.
>
> (c) Nothing in this chapter is intended to, nor shall it be construed to, encourage unsound lending practices or the allocation of credit.

12 U.S.C. § 2802:

§ 2802. Definitions

For purposes of this chapter—

(1) the term "mortgage loan" means a loan which is secured by residential real property or a home improvement loan;

(2) the term "depository institution" means any commercial bank, savings bank, savings and loan association, building and loan association, or homestead association (including cooperative banks) or credit union which makes federally related mortgage loans as determined by the Board;

(3) the term "Board" means the Board of Governors of the Federal Reserve System; and

(4) the term "Secretary" means the Secretary of Housing and Urban Development.

12 U.S.C. § 2803:

§ 2803. Maintenance of records and public disclosure—Duty of depository institutions; nature and content of information

(a)(1) Each depository institution which has a home office or branch office located within a standard metropolitan statistical area, as defined by the Office of Management and Budget shall compile and make available, in accordance with regulations of the Board, to the public for inspection and copying at the home office, and at least one branch office within each standard metropolitan statistical area in which the depository institution has an office the number and total dollar amount of mortgage loans which were (A) originated, or (B) purchased by that institution during each fiscal year (beginning with the last full fiscal year of that institution which immediately preceded the effective date of this chapter).

(2) The information required to be maintained and made available under paragraph (1) shall also be itemized in order to clearly and conspicuously disclose the following:

(A) The number and dollar amount for each item referred to in paragraph (1), by census tracts, where readily available at a reasonable cost, as determined by the Board, otherwise by ZIP code, for borrowers, under mortgage loans secured by property located within that standard metropolitan statistical area.

(B) The number and dollar amount for each item referred to in paragraph (1) for all such mortgage loans which are secured by property located outside that standard metropolitan statistical area.

For the purpose of this paragraph, a depository institution which maintains offices in more than one standard metropolitan statistical area shall be required to make the information required by this paragraph available at any such office only to the extent that such information relates to mortgage loans which were originated or purchased by an office of that depository institution located in the standard metropolitan statistical area in which the office making such information available is located.

* * *

12 U.S.C. § 2805:

§ 2805. Relation to state laws

(a) This chapter does not annul, alter, or affect, or exempt any State chartered depository institution subject to the provisions of this chapter from complying with the laws of any State or subdivision thereof with respect to public disclosure and recordkeeping by depositor institutions, except to the extent that those laws are inconsistent with any provision of this chapter, and then only to the extent of the inconsistency.

The Board is authorized to determine whether such inconsistencies exist. The Board may not determine that any such law is inconsistent with any provision of this chapter if the Board determines that such law requires the maintenance of records with greater geographic or other detail than is required under this chapter, or that such law otherwise provides greater disclosure than is required under this chapter.

(b) The Board may by regulation exempt from the requirements of this chapter any State chartered depository institution within any State or subdivision thereof if it determines that, under the law of such State or subdivision, that institution is subject to requirements substantially similar to those imposed under this chapter, and that such law contains adequate provisions for enforcement. Notwithstanding any other provision of this subsection, compliance with the requirements imposed under this subsection shall be enforced under—

(1) Section 1818 of this title in the case of national banks, by the Comptroller of the Currency; and

(2) Section 1464(d) of this title in the case of any institution subject to that provision, by the Federal Home Loan Bank Board.

12 U.S.C. § 2808:

§ 2808. Effective date

This chapter shall take effect on the one hundred and eightieth day beginning after December 31, 1975. Any depository institution which has total assets as of its last fiscal year of $10,000,000 or less is exempt from the provisions of this chapter.

Illinois Financial Institutions Disclosure Act

Ill. Rev. Stat., 1975, Ch. 95, § 201:

201. Short title.] § 1. This Act shall be known and may be cited as the "Financial Institutions Disclosure Act."

Ill. Rev. Stat., 1975, Ch. 95, § 202:

202. Definitions.] § 2. Unless the context clearly requires otherwise, the following terms have the meanings ascribed to them in this Section:

(a) "Director" means the Director of the Illinois Department of Financial Institutions;

(b) "institution" means any bank, insurance company, mortgage banking company or savings and loan association which operates or has a place of business in this State; and

(c) "neighborhood" means an area designated by a single code under the Zoning Improvement Plan (ZIP) of the United States Postal Service.

Ill. Rev. Stat., 1975, Ch. 95, § 203:

203. Semi-annual statements.] § 3. Beginning on January 1, 1976, each institution shall file semi-annually with the Director, on or before a date of 60 days after the end of the fiscal year of the institution and a date of 6 months thereafter, a statement showing for each neighborhood which lies wholly or partially within a county having a population of more than 100,000 persons, and a statement showing for each census tract which lies wholly or partially within a county having a population of more than 100,000 persons:

The number and aggregate dollar amount of written applications for, and the number granted and aggregate dollar amount of:

(1) Loans secured by residential real estate;

(2) mortgage loans insured under the federal National Housing Act, Title 12, United States Code, Chapter 13;[1]

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1. 12 U.S.C.A. § 1701 et seq.

(3) mortgage loans guaranteed under the provisions of the federal Veterans' Benefits Act, Title 38, United States Code, Chapter 37, Subchapter II;[2]

(4) construction loans; and

(5) home improvement loans and loans made in accordance with Subchapter I, "Housing Renovation and Modernization," of the National Housing Act, Title 12, United States Code, Chapter 13.[3]

Ill. Rev. Stat., 1975, Ch. 95, § 204:

204. Filing of statements — Verification.] § 4. Each statement filed under the provisions of this Act shall be filed on forms supplied by the Director, and shall be verified by a licensed public accountant or by 2 officers of the institution.

Ill. Rev. Stat., 1975, Ch. 95, § 205:

205. Inspection of statements—Copies—Use as evidence of violations.] § 5. The Director shall make statements filed under the provisions of this Act available for public inspection during the regular business hours of his office, and shall provide copies of the statements to any interested person upon payment of a reasonable fee to cover the cost of copying. Each financial institution which has filed a statement shall make copies of statements available for public inspection in each of its offices during regular business hours of each office.

Whenever the Director has reason to believe that a violation of this Act has occurred, he shall forward such evidence to the Attorney General.

Ill. Rev. Stat., 1975, Ch. 95, § 206:

206. Violations — Penalties.] § 6. (a) An institution which is required to file statements by this Act,

2. 38 U.S.C.A. § 1810 et seq.
3. 12 U.S.C.A. § 1702 et seq.

and which fails to submit a statement on the date required in Section 3 of this Act,[4] is guilty of a business offense and shall be fined $500 or $100 for each day on which the statement has not been filed after the required date, whichever is greater.

(b) Any person who knowingly or intentionally files or participates in the filing of any statement required by this Act which is false of[5] misleading in any material regard is guilty of a Class 4 felony.

Ill. Rev. Stat., 1975, Ch. 95, § 207:

207. Confidential matters protected.] § 7. To insure and protect the confidential nature of an individual's financial status, no provision of this Act shall be construed as requiring any institution to divulge, other than to an appropriate State agency, the names of individual depositors or mortgagors; neither shall any provision of this Act be construed as authorizing any officer of this State to require any institution to divulge, other than to an appropriate State agency, the names of individual depositors or mortgagors.

Ill. Rev. Stat., 1975, Ch. 95, § 208:

208. Severability.] § 8. If any provision of this Act or the application thereof to any person or circumstance is held invalid, such determination of invalidity shall apply to all provisions of this Act. No provision is severable.

4. Chapter 95, § 203.
5. "of" in enrolled bill.

Supreme Court, U. S.
FILED
OCT 10 1978
MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1978

No. 78-114

A. T. TSOUMAS, Director, Illinois Department of Financial Institutions,

Petitioner.

vs.

GLEN ELLYN SAVINGS AND LOAN ASSOCIATION, THE MILLIKEN NATIONAL BANK OF DECATUR and THE FIRST FEDERAL SAVINGS AND LOAN ASSOCIATION OF WAUKEGAN,

Respondents.

RESPONSE TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

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RESPONSE TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

In this case the Supreme Court of Illinois has not (1) decided a federal question of substance not heretofore determined by the United States Supreme Court, nor (2) decided a federal question in a way which is not in accord with the prior applicable decisions of the United States Supreme Court.

The State of Illinois has elected to rest its Petition upon the issue of whether there is an unambiguous congressional

mandate that federal law shall apply exclusively to the regulation of federal financial institutions in the area of mortgage disclosure. In presenting this issue it relys upon the following line of cases: *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218 (1947); *Rice v. Board of Trade*, 331 U.S. 247 (1947); *Florida Avocado Growers v. Paul*, 373 U.S. 132 (1963); and *De Canas v. Bica*, 424 U.S. 351 (1976). In *Santa Fe Elevator* the Court held that an explicit grant of "exclusive" regulatory authority to the Secretary of Agriculture preempted state regulation. In the *Board of Trade* case such an exclusivity provision was absent. While the Court upheld the validity of the state action in the latter case, it clearly did not do so simply because of the absence of an exclusivity provision to show the "clear and manifest" intent of Congress. This is apparent if examination is made of the manner in which the test emuniciated in these two cases is applied.

In *Florida Avocado Growers v. Paul*, 373 U.S. 132 (1963), the Court cited the *Santa Fe Elevator* and *Board of Trade* cases approvingly, 373 U.S. at 146, but then proceeded to an examination of the comprehensiveness of the federal statute in question and then its legislative history, as follows:

> "A third factor which strongly suggests that Congress did not mandate uniformity for each marketing order arises from the legislative history. The provisions concerning the limited duration and local application of marketing agreements received much attention from both House and Senate Committees reporting on the bill . . . .
>
> The Committee Reports also discussed § 10(i), 7 USC § 610(i), which authorized federal-state cooperation in the administration of the program, and cautioned significantly:
>
> 'Notwithstanding the authorization of cooperation contained in this section, there is nothing in it to permit or require the Federal Government to invade the field of the States, for the limitations of the act and the Constitution forbid federal regulation in that field, and this provision does not indicate the contrary. Nor is there anything in the provision to force the States to cooperate. Each sovereignty operates in its own sphere but can exert its authority in conformity rather than in conflict with that of the other.' HR Rep. No. 1241, 74th Cong., 1st Sess 22-23; S Rep. No. 1011, 74th Cong., 1st Sess 15" (373 U.S. at 149-150.)

Thus, on the question of congressional intention to preempt, the legislative history of the federal statute is of material significance.

The Supreme Court's decision in *De Canas v. Bica*, 424 U.S. 351 (1976), rests upon exactly the same rationale.

> "Of course, even state regulation designed to protect vital state interests must give way to paramount federal legislation. But we will not presume that Congress, in enacting the INA, intended to oust state authority to regulate the employment relationship covered by § 2805(a) in a manner consistent with pertinent federal laws. Only a demonstration that complete ouster of state power — including state power to promulgate laws not in conflict with federal law — was "the clear and manifest purpose of Congress" would justify that conclusion. *Florida Lime & Avocado Growers v. Paul*, supra, at 146, 10 L. Ed 2d 248, 83 S. Ct. 1210, quoting *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230, 91 L. Ed. 1447, 67 S. Ct. 1146 (1947). Respondents have not made that demonstration. *They fail to point out, and an independent review does not reveal, any specific indication in either the wording or the legislative history* of the INA that Congress intended to preclude even harmonious state regulation touching on aliens in general, or the employment of illegal aliens in particular. (424 U.S. at 357-358.) (Emphasis supplied.)

In *De Canas* the Court found the state statute not to be preempted and thereby reversed the Court of Appeals. The Court distinguished *Guss v. Utah Labor Board,* 353 U.S. 1 (1957) and *San Diego Unions v. Garmon,* 353 U.S. 26 (1957) which were relied upon by the Court below in finding preemption as follows:

> "Reliance upon those decisions was misplaced. Those decisions involved labor management disputes over conduct expressly committed to the National Labor Relations Board to regulate, but concerning which the Board had declined to assert jurisdiction; the Board had not ceded jurisdiction of such regulation to the States, as it was empowered to do . . . .
>
> The Court held in that circumstance that '[t]o leave the States free to regulate conduct so plainly within the central aim of federal regulation involves too great a danger of conflict between power asserted by Congress and requirements imposed by state law. *San Diego Unions v. Garmon,* 359 U.S. at 244, 3 L. Ed. 2d 775, 79 S. Ct. 773. Guss and Garmon recognize, therefore, *that in areas that Congress decides require national uniformity of regulation, Congress may exercise power to exclude any state regulation,* even if harmonious. But nothing remotely resembling the NLRA scheme is to be found in the INA." (424 U.S. at 59, n. 7) (Emphasis supplied.)

Thus, the *De Canas* Court recognized the paramount importance of deciding on a statute-by-statute basis whether or not the issue under adjudication fell into an area which Congress had ". . . decide[d] required [d] national uniformity of regulation. . . ."

Section 306 of The Home Mortgage Disclosure Act of 1975 (12 U.S.C. 2805) contains an unambiguous Congressional mandate as to the exclusivity of federal control with

respect to public disclosure and recordkeeping by federal depository institutions. That section states:

> "Relation To State Laws
>
> "SEC. 306. (a) This title does not annul, alter, or affect, or exempt any State chartered depository institution subject to the provisions of this title from complying with the laws of any State or subdivision thereof with respect to public disclosure and recordkeeping by depositor (sic) institutions, except to the extent of the inconsistency. The Board (the Fed) is authorized to determine whether such inconsistencies exist. The Board may not determine that any such law is inconsistent with any provision of this title if the Board determines that such law requires the maintenance of records with greater geographic or other detail than is required under this title, or that such law otherwise provides greater disclosure than is required under this title.
>
> "(b) The Board may by regulation exempt from the requirements of this title any State chartered depository institution within any State or subdivision thereof if it determines that, under the law of such State or subdivision, that institution is subject to requirements substantially similar to those imposed under this title, and that such law contains adequate provisions for enforcement. Notwithstanding any other provision of this subsection, compliance with the requirements imposed under this subsection shall be enforced under - -
>
> (1) Section 8 of the Federal Deposit Insurance Act in the case of national banks, by the Comptroller of the Currency (sic); and
>
> (2) Section 5(d) of the Home Owners' Loan Act of 1933 in the case of any institution subject to that provision, by the Federal Home Loan Bank Board."

The section states, with respect to State-chartered depository institutions only, that the federal law does not

annul any State law, alter any State law, affect any State law, or exempt any State-chartered depository institution from complying with any State law, except to the extent that the State law is inconsistent with any provision of the Federal law.

It makes no such statement with respect to Federally-chartered depository institutions, and its silence on this issue together with the legislative history, indicates a mandate on the part of Congress to pre-empt the regulation of federal institutions in the area of mortgage disclosure.

The pertinent legislative history of the Federal Act on this issue is significant. Both the Senate bill (S. 1281, 94th Congress, 1st Session, 1975) and the House bill (H.R. 10024, 94th Congress, 1st Session, 1975) contained "Relation to State Laws" sections. Section 306 of H.R. 10024 initially stated:

> "RELATION TO STATE LAWS
>
> "SEC. 306. (a) This title does not annul, alter, or affect, or exempt any person subject to the provisions of this title from complying with the laws of any State or subdivision thereof with respect to public disclosure and recordkeeping by depositor (sic) institutions, except to the extent that those laws are inconsistent with any provision of this title, and then only to the extent of the inconsistency. The Board is authorized to determine whether such inconsistencies exist. The Board may not determine that any such law is inconsistent with any provision of this title if the Board determines that such law requires the maintenance of records with greater geographic or other detail than is required under this title, or that such law otherwise provides greater disclosure than is required under this title."
>
> "(b) The Board may by regulation exempt from the requirements of this Act any depository institution within any State or subdivision thereof if it determines that, under the law of such State or subdivision, that institution is subject to requirements substantially similar to those imposed under this Act, and that such law contains adequate provisions for enforcement."

Some confusion existed as to whether the language of the respective "Relation to State Laws" sections of the Senate and House bills could be construed to require Federal associations to comply with disclosure and recordkeeping requirements imposed by State law.

Action was taken to remove this confusion on the House Floor on October 31, 1975, when H.R. 10024 was under consideration. At that time, Representative Stephens (D-Ga.) offered an amendment to section 306 of H.R. 10024 which would substitute the words "state chartered depository institution" for the word "person" where it appears in section 306(a), and add the words "state chartered" before the words "depository institution" where they appear in section 306(b). Upon introducing this amendment, Representative Stephens made the following remarks which appear on p. H10517 of the Congressional Record for October 31, 1975:

> "MR. STEPHENS. . . .
>
> "This amendment really and truly is nothing but an attempt to put into the law exactly what was disclosed by the colloquy between the chairman of this subcommittee and the gentleman from Illinois (Mr. Annunzio). . . .
>
> "So far as these federally controlled savings and loan associations are concerned, they have always been regulated by the Federal Home Bank Board. The Federal Home Loan Bank Board in considering the language of the statute, says it is not clear whether that is to be continued or not. This is what the Board has asked to be done, and this is why I offered the

amendment. I will read from a letter of the Federal Home Loan Bank Board as follows:

'We are concerned that section 306 of Title III could be construed to require Federal savings and loan associations to comply with public disclosure and recordkeeping requirements imposed by State law. As you know, this provision is identical, except for certain technical amendments to section 6 of S. 1281 approved by the Senate on September 4, 1975. Although it is not clear from a reading of section 306 that the section would subject Federal institutions to State Law disclosure requirements, such an inference has been drawn by language in the House Banking Committee report . . . The report states: "H.R. 10024 makes it clear that Federal institutions must comply with State law and regulations".'

"That was not what was understood from the hearing as the intent of Committee.

"Mr. Chairman, this would clarify that. That is all it does.

"Let me point this out: My amendment does not change existing law at all. It merely confirms that we are not intending to change existing law by the language that is in the statute or in the report.

"Mr. Chairman, I urge the support of this amendment.

"MR. ROUSSELOT. Mr. Chairman, will the gentleman yield?"

"MR. STEPHENS. I yield to the gentleman from California."

"MR. ROUSSELOT. Mr. Chairman, we believe this is a good and reasonable amendment, and we support it."

The amendment was adopted. On October 31, 1975, H.R. 10024, as amended, was approved by the House.

Finally, the differences between Section 6 of the Senate bill and Section 306 of the House bill were resolved in the Joint Conference by the Senate and House Conference adopting the House language. The Conference Report No. 94-553, dated December 12, 1975, states:

"RELATION TO STATE LAWS

"The Senate bill provided that this legislation does not exempt any person otherwise subject to state or local laws regarding recordkeeping and disclosure by depository institutions except to the extent of inconsistency with the provisions of this Act, and then only to the extent of the inconsistency, with the provision that the Board shall determine whether such inconsistencies exist. The Senate's intent was to subject all depository institutions in a jurisdiction to the same mortgage disclosure law, whether State or Federal, depending on which offered a greater degree of disclosure of mortgage information. . . .

"The Senate conferees regard the House provision concerning Federal pre-emption as an exception to the pre-emption provisions of other consumer finance laws, including the Trust in Lending and the Fair Credit Billing Acts, which contain provisions similar to the Senate provisions of S. 1281.

"In the case of mortgage disclosure, however, the conferees on the part of the House strongly believe that subjecting a Federally chartered institution to state law would threaten the dual banking system.

"With the understanding that this provision goes only to the narrow area of geographical disclosure of mortgage lending statistics, the Senate conferees agreed to the House provision, which is included in the conference report."

The Home Mortgage Disclosure Act of 1975 was signed into law by the President on December 31, 1975 (Public Law 94-200).

CONCLUSION

By Petitioner's own adopted standard and in accord with the reasoning of the cases cited by Petitioner, the Illinois Supreme Court has confirmed the fact that in this case there has been an unambiguous congressional mandate that federal financial institutions be controlled only by federal law in the area of mortgage foreclosure regulation.

Respectfully submitted,

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